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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

N.Z., R.M., B.L., S.M., and A.L.,
individually and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED,
FENIX INTERNET LLC, BOSS
BADDIES LLC, MOXY
MANAGEMENT, UNRULY AGENCY
LLC (also d/b/a DYSRPT AGENCY),
BEHAVE AGENCY LLC, A.S.H.
AGENCY, CONTENT X, INC., VERGE
AGENCY, INC., AND ELITE
CREATORS LLC,
Defendants.

Case No. 8:24-cv-01655-FWS-SSC

**PLAINTIFFS' REPLY IN
SUPPORT OF MOTION FOR
LEAVE TO WITHDRAW ECF
NOS. 138, 141, 142, AND 158,
AND FILE CORRECTIVE
BRIEFS**

Judge: Hon. Fred W. Slaughter
Courtroom: 10D
Date: September 25, 2025
Time: 10:00 a.m.

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I. INTRODUCTION

In opposing Plaintiffs’ Motion for Leave to Withdraw ECF Nos. 138, 141, 142, and 158 and File Corrective Briefs (“Motion for Leave”), Defendants Fenix International Limited and Fenix Internet LLC (collectively “Fenix”) ignore that Hagens Berman has an ethical duty to correct the briefing and provide full transparency to the Court. Fenix instead argues that Plaintiffs’ counsel should all be sanctioned—while mischaracterizing Hagens Berman’s statements—and the Court should strike the original briefs. In making these arguments, Fenix fails to address the actual corrections made to the briefing or whether those *corrections* are prejudicial to Fenix. Because Fenix cannot show that the corrections themselves are prejudicial, the Court should grant the Motion for Leave. What sanctions the Court issues related to the use of AI—and in Hagens Berman’s case, the failure to follow proper procedures—is a separate question for the Court.

II. FACTS

Lead counsel Robert Carey, of Hagens Berman, and Celeste Boyd¹ have been transparent with this Court and opposing counsel regarding the errors that occurred, fully taking the blame for those errors and trying to correct them by requesting leave to file corrective briefs as their ethical obligations require.² But Fenix has used that as an opportunity to cast aspersions on all of Plaintiffs’ counsel by misrepresenting, mischaracterizing, or drawing unfounded conclusions from what Plaintiffs’ counsel laid out in their Motion for Leave and supporting declarations.

¹ Plaintiffs’ counsel will file additional material on or before September 18, 2025, further addressing the Court’s Order to Show Cause (ECF No. 187) as permitted in that Order.

² Plaintiffs acknowledge that they did not meet and confer with the Agency Defendants before filing their Motion, as argued by Defendant Elite Creators LLC (“Elite Creators”). ECF No. 183 at 1. As stated in their Motion, they included the correction to their Response to the Agency Defendants’ Motions to Dismiss to provide full transparency to the Court. ECF No. 176 at 19–20.

1 Plaintiffs do not want to engage in an unprofessional back and forth on what
2 occurred but instead correct the record.³

3 First, Fenix misrepresents the relationship between Hagens Berman and
4 Celeste Boyd. Fenix refers to Ms. Boyd as a “contract attorney” in three separate
5 arguments in their Opposition to Plaintiffs’ Motion for Leave to File Corrected
6 Briefs (“Opposition”), without the evidentiary support required by Rule 11 for any
7 motion presented to the Court. ECF No. 185 at 1, 5, and 18. Mr. Carey’s
8 declaration specifically states that Ms. Boyd is “co-counsel” with Hagens Berman.
9 ECF No. 176-1 ¶ 5. As such, she puts in her time on the same basis as all other co-
10 counsel and is not paid as she goes by Hagens Berman. Declaration of Robert B.
11 Carey (“Carey Decl.”) ¶ 3.

12 Second, Fenix intimates that Mr. Carey knew there were “citation errors that
13 led him to suspect improper AI use,” but did nothing to correct them. ECF No. 185

14 _____
15 ³ Although the Court denied Plaintiffs’ Motion for Continuance, Fenix argued
16 that Plaintiffs’ counsel knew it was improper: “Unlike the Motion for Leave, most
17 of Plaintiffs’ twelve attorneys of record declined to permit their names to appear on
18 the Motion to Continue, which strongly suggests that all counsel *except* Hagens
19 Berman understood the problems with this maneuver.” ECF No. 185 at 11. Fenix’s
20 argument is devoid of evidentiary support required by Rule 11 for a factual
21 contention in a motion and misrepresents the record. Hagens Berman’s co-counsel
22 did not sign the Motion for Leave or the Motion to Continue. Co-counsel’s
23 signature blocks were left off first, because they did not have the chance to fully
24 review the filings, and second, because Hagens Berman was trying to insulate co-
25 counsel from errors and misuse of AI they were not involved in and were not
26 responsible for. *See Mavy v. Comm’r of Soc. Sec. Admin.*, No. CV-25-00689-PHX-
27 KML (ASB), 2025 WL 2355222, at *2 n.1 (D. Ariz. Aug. 14, 2025). (“Counsel
28 redacts the names of other attorneys involved in drafting and editing the Opening
Brief. The Court does not take issue with this approach, as Rule 11 applies to the
signing attorney.”) (internal citations omitted). Further, Plaintiffs did not file an *ex parte*
motion to prejudice Defendants or mislead the Court; rather Plaintiffs’
counsel wanted to give the other parties the opportunity to respond and gave notice
to the Court’s deputy that Plaintiffs intended to file such a motion, to comply with
this Court’s procedures on continuances, and avoid seeking *ex parte* relief.

1 at 9. This is incorrect and omits critical context. Mr. Carey did not discover any
2 incorrect or fake legal citations, which is what is at issue here. Rather, in finalizing
3 the briefs, his team at Hagens Berman discovered there were errors in the “record
4 citations” and assumed the mistakes had come from citing to the wrong complaint.
5 ECF No. 176-1 ¶ 12. Mr. Carey clarifies that the “inaccurate citations [were] to
6 paragraphs in the First Amended Complaint” and again reiterates that he “thought it
7 could have been from a previous draft of the complaint and numbering had
8 changed, or from the complaint in a parallel case we are litigating, or perhaps from
9 someone using AI.” *Id.* ¶ 23. Mr. Carey raised the issue with Ms. Boyd and she
10 maintained she did not know what had happened. *Id.* ¶ 12. Even then, Mr. Carey
11 did not suspect Ms. Boyd of using AI. *Id.* But to be sure that none of Hagens
12 Berman’s other co-counsel used AI, and not understanding where the material
13 originated, he “ran reporter cites from the brief to confirm the cases pulled up were
14 the same names and subject matter that was in the brief.” *Id.* ¶ 23. Because they
15 “checked out,” Mr. Carey “did not check the parenthetical quotes because [his]
16 understanding of AI at the time was that it produced fake cases or holdings.” *Id.*
17 Mr. Carey’s error was one of process—in not checking every citation before filing,
18 not an intentional disregard for the use of AI. The presence of inaccurate record
19 cites—generally created by multiple people or filled in by staff reviewing case
20 documents—did not alert Hagens Berman to the use of AI legal citations, as legal
21 research is a completely different process.

22 Third, Fenix claims that Mr. Carey’s statements to the press were
23 inconsistent with what he told the Court. ECF No. 185 at 1, 8–9. Fenix states that
24 Mr. Carey told the press that he did not believe he needed to check Ms. Boyd’s
25 work, but then told the Court “his team discovered citation errors that led him to
26 suspect improper AI use.” *Id.* at 9. But Mr. Carey’s declaration says the same thing
27 he said to the press: “Given Ms. Boyd’s previous work quality and my involvement
28 with previous iterations (which were very close to final), I did not think that

1 forgoing a full-cite check would be problematic.” ECF No. 176-1 ¶ 11. Because of
2 the timing, Mr. Carey’s staff was unable to run their normal checks, but because
3 Ms. Boyd had, over the previous decade, always checked her own work
4 meticulously, he did not check her work. *Id.* ¶¶ 7–11. Mr. Carey acknowledges that
5 was an error. *Id.* ¶ 14. Mr. Carey also made the same statement regarding the
6 Response to the Motion for Reconsideration: “Given the last-minute drafting and
7 editing, Hagens Berman again did not cite check Ms. Boyd’s work, given her
8 history of excellence.” *Id.* ¶ 13. And, as already explained, Mr. Carey’s team did
9 not discover “citation errors,” but errors in the First Amended Complaint record
10 cites. Even then he did not suspect Ms. Boyd of using AI, particularly after he
11 confirmed that the selected cases he checked existed and involved the subject
12 matter at issue. *Id.* ¶ 23.

13 Fourth, Fenix claims, “[t]he attorneys from the other three firms appearing on
14 the briefs have said nothing at all, even though it appears they may have drafted
15 portions of some of the submissions containing AI-hallucinations.” ECF No. 185 at
16 4. The factual contention that the AI-hallucinations came from other co-counsel is
17 false and lacks the evidentiary support required for statements presented via
18 motion. Mr. Carey’s declaration makes it clear that the other three firms did not use
19 “AI to draft their portions of the briefs, nor were they involved in the finalizing of
20 the briefs.” ECF No. 176-1 ¶ 9. Mr. Carey even provides a specific example of a
21 correct citation he received from co-counsel. *Id.* ¶ 10. And Ms. Boyd explains that
22 she took that accurate cite and it was changed by AI. ECF No. 176-2, App. A at 12–
23 13. To clarify, the attorneys from the other three firms did not use AI in the portions
24 they drafted and the existence of any AI had nothing to do with their work, as
25 Hagens Berman and Ms. Boyd were solely responsible for finalizing and filing the
26 briefs. Hagens Berman directed and assigned the work related to these briefs and
27 Plaintiffs’ attorneys from the other firms did not have the opportunity to finalize the
28 briefs for filing. Carey Decl. ¶ 4.

1 Fifth, Fenix claims that ten attorneys across Plaintiffs' counsel signed the
2 briefs and were responsible for supervising Ms. Boyd. ECF No. 185 at 2. Only Mr.
3 Carey's signature appears on every brief (ECF Nos. 138, 141, 142, 158), and Fenix
4 cites nothing for its proposition that every Plaintiffs' counsel who has appeared in
5 this case or is listed in a signature block but not the signing attorney is responsible
6 for supervising Ms. Boyd.

7 Sixth, Fenix argues that Hagens Berman is blaming Fenix for its mistakes.
8 Nothing in the Motion or the Declarations blames Fenix. ECF No. 185 at 1. Fenix
9 takes one statement out of the Motion for Continuance to argue: "Plaintiffs claim
10 Fenix have no right to oppose Plaintiffs' request for corrected briefing because
11 Fenix failed to alert Plaintiffs' counsel about the AI hallucinations sooner and
12 should have stipulated to allow them to file corrected briefs." *Id.* at 17. Plaintiffs
13 argued in the Motion for Continuance that Fenix had "unclean hands in opposing a
14 continuance," because they could have notified Plaintiffs of the deficiencies
15 (particularly during the meet and confers on discovery), and Fenix cannot claim
16 prejudice by a continuance. ECF No. 178 at 2, 11. Nowhere did they say that Fenix
17 could not oppose the Motion or that Fenix should have stipulated to the corrective
18 briefs.

19 Last, Fenix claims the errors were "the worst misuse of AI in any of the more
20 than 200 public instances where AI was used in submissions to a United States
21 court." ECF No. 185 at 1. In making this contention, Fenix points solely to the
22 number of incorrect citations—claiming there were "more than 30 apparent AI
23 hallucinations"—lumping every error together.⁴ ECF No. 185 at 5. Plaintiffs do not

24 ⁴ Fenix cites a database of AI-hallucinated cases to show this is the worst case of
25 AI, but that database does not appear to provide any methodology for how it
26 records what AI was used. Fenix points to the supposed 30 AI hallucinations as
27 being far above what is reported in other cases, but on that very website this case is
28 listed. There it reports: "Fabricated Case Law (1)" and "Misrepresented Case Law

1 dispute the use of some AI by Ms. Boyd, but find it necessary to provide critical
2 context to those errors—not to excuse them—but because they are highly relevant
3 to any prejudice to Fenix as well as what sanctions are appropriate in this case.

4 As a preliminary issue, this was not a case where counsel used AI to do legal
5 research, but a case where AI filled in placeholders or took existing cases found by
6 Plaintiffs and either used them for other propositions or created fake quotations.
7 ECF No. 176-2, App. A. As demonstrated below, 97 of the 103 cited cases are real
8 cases, found through legal research, and are supportive of Plaintiffs' arguments.

9 Plaintiffs cited fifty-seven cases in their Response to the Fenix Defendants'
10 Motion to Dismiss (ECF No. 141). Of those, one case was AI-generated (where a
11 placeholder had been put in a brief) and six cases were cited for the wrong
12 proposition. ECF No. 176-2, App. A; ECF No. 176 at 14. Of those six cases, four of
13 them were cited for other propositions in the case, so they were relevant to the
14 response and had to be reviewed by Fenix even without the errors.⁵ Plaintiffs have
15 requested leave to delete the four instances where they were miscited and have not
16

17 (1), Exhibits or Submissions (1).”

18 [https://www.damiencharlotin.com/hallucinations/?q=&sort_by=-](https://www.damiencharlotin.com/hallucinations/?q=&sort_by=-date&states=USA&period_idx=0)
19 [date&states=USA&period_idx=0](https://www.damiencharlotin.com/hallucinations/?q=&sort_by=-date&states=USA&period_idx=0). In other words, relying on the data reported on
20 that website, this case does not appear to be any more egregious than most of the
cases listed.

21 ⁵ *Calise v. Meta Platforms, Inc.*, 103 F.4th 732 (9th Cir. 2024) was cited for the
22 incorrect proposition (ECF No. 141 at 31), but was correctly cited two additional
23 times in the response. ECF No. 141 at 17, 20. *In re Hulu Privacy Litigation*, 86 F.
24 Supp. 3d 1090 (N.D. Cal. 2015) was cited for the incorrect proposition (ECF No.
25 141 at 31), but was correctly cited three additional times in the response. ECF No.
26 141 at 27, 28, 31. *Archer v. NBCUniversal Media, LLC*, 2025 U.S. Dist. LEXIS
27 129598 (C.D. Cal. July 2, 2025) was cited for the incorrect proposition (ECF No.
28 141 at 32), but was correctly cited again in the response. ECF No. 141 at 29–30.
And *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, 402 F. Supp.
3d 767 (N.D. Cal. 2019) was cited for the incorrect proposition (ECF No. 141 at
37), but was correctly cited again in the response. ECF No. 141 at 31.

1 sought leave to replace the citations with new case law.⁶ The two cases that were
2 not otherwise cited in the response were deleted, but the propositions for which
3 they were cited were also supported by another authority, meaning they were
4 superfluous. ECF No. 176 at 14–15. There were seven additional cases that were
5 cited for the correct proposition, but the quotes were inaccurate. ECF No. 176 at
6 15–16. In other words, in moving to file a corrective brief, only three of the cases
7 cited were irrelevant to the motion, one of which did not exist.⁷

8 Plaintiffs cited eighteen cases in their Response to the Fenix Motion for
9 Reconsideration (ECF No. 158). Of those, six cases were cited for the incorrect
10 proposition. ECF No. 176 at 17–18. Among those six, two were not cited for any
11 other proposition in the case. *Id.* at 18. More importantly, of the six cases cited for
12 the incorrect proposition, three were cited for the unremarkable proposition that the
13 court has discretion to grant reconsideration. ECF No. 176 at 17–18. That
14 proposition does not affect Plaintiffs’ substantive arguments. The other cases that
15 were cited for the incorrect proposition were all supported by a second case. *Id.* at
16 18. Plaintiffs cited nine cases for the correct proposition, but the quotation or
17 parenthetical were incorrect.⁸ *Id.* at 18–19. In other words, only two of the cases
18 that Plaintiffs cited were irrelevant to the response.

19
20 ⁶ One exception to this is replacing *In re Facebook* (ECF No. 141 at 37), with
the statute that is already cited in the response. ECF No. 176-6 at 37–38.

21 ⁷ The case that did not exist was cited in Plaintiffs’ venue argument, something
22 the Court had already decided. ECF No. 141 at 13 (citing *Doe v. Match*).

23 ⁸ In their Motion, Plaintiffs noted that nine cases were cited for the correct
24 proposition, but the quotations or parentheticals were inaccurate, listing the cases.
25 In reviewing that filing, Plaintiffs inadvertently only listed eight of the nine cases
26 they mention. ECF No. 176 at 18–19. Plaintiffs note here that *Motorola, Inc. v. J.B.*
27 *Rodgers Mech. Contrs., Inc.*, 215 F.R.D. 581 (D. Ariz. 2003) (ECF No. 158 at 3–4),
28 should have been included on that list, but the corrections to that case are reflected
in the proposed corrective response and on the redline filed with the Court (ECF
Nos. 176-9 at 3, 176-10 at 3–4).

1 Plaintiffs cited forty-four cases in their Response to the Agency Defendants'
2 Motions to Dismiss (ECF No. 142). To ensure that AI had not infected that
3 response, Plaintiffs ran a cite check of all forty-four cases. Four cases were cited for
4 the incorrect proposition. ECF No. 176-8 at 16, 25–26, 34. Among those, only one
5 was not cited for any other proposition in the case. ECF No. 176-8 at 34 (deleting
6 *People v. Hawkins*, 6 Cal. App. 5th 134 (2016)). An additional case was cited for a
7 related proposition, but the quotation was inaccurate. *Id.* at 26. In other words, only
8 one case Plaintiffs cited was irrelevant.

9 None of the cases in Plaintiffs' Response to the Motion to Strike and RFJN
10 (ECF No. 138) were affected by AI. And Plaintiffs withdrew their objections to the
11 RFJN because of an inaccurate record cite. ECF No. 177.

12 Across the four briefs (ECF Nos. 138, 141, 142, 158) Plaintiffs cited 103
13 cases. Of those 103 cases, one was AI-generated, discussing the standard for forum-
14 selection clauses, which the Court had already addressed. Five cases are not cited
15 for any other proposition in the briefs, but the proposition each case was cited for
16 was supported by an additional authority. The remaining 97 cases support
17 Plaintiffs' arguments, further demonstrating that this is not a situation where
18 counsel used AI to research the legal authority that supports Plaintiffs' claims. And
19 Plaintiffs have deleted or withdrawn any arguments that were unsupported by the
20 existing authority. These statistics are not included here to excuse Hagens Berman's
21 and Ms. Boyd's conduct but, instead, noted to provide clarity and context to the
22 possible prejudice to Fenix.

III. ARGUMENT

A. Fenix's claims of sanctionable conduct are overstated.

1. Fenix has not shown that every Plaintiffs' counsel must be sanctioned or shown that Mr. Carey's conduct was intentional.

Fenix claims Mr. Carey and related counsel⁹ violated Rule 11 and failed in their supervision of Ms. Boyd. As a preliminary issue, “Rule 11 applies to the signing attorney.” *Mavy*, 2025 WL 2355222, at *2 n.1 (citing Fed. R. Civ. P. 11). There is no dispute here that Mr. Carey signed all the affected briefs, and Fenix's attempt to claim that all ten attorneys signed them—because their names appeared on the briefs—has no basis in fact or law. *See Giebelhaus v. Spindrift Yachts*, 938 F.2d 962, 966 (9th Cir. 1991) (“a typewritten name is not a signature for the purpose of Rule 11”). This is precisely why Hagens Berman removed the names of co-counsel, to avoid the very arguments Fenix makes here—that all counsel should be sanctioned—an approach approved by *Mavy*. *Mavy*, 2025 WL 2355222, at *2 n.1 (finding no issue with redacting the names of other attorneys).

Fenix cites *Park v. Kim*, 91 F.4th 610, 615 (2d Cir. 2024), to show that “Mr. Carey and his team violated Rule 11(b)(2).” ECF No. 185 at 7. The *Park* court found: “At the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely.” *Park*, 91 F.4th at 615. Here, all but one case existed and 97 of the remaining 102 cases were supportive of Plaintiffs' briefs. Mr. Carey generally reviewed many of those cases or was otherwise familiar with them in his extensive experience as a class-action attorney. ECF No. 176-1 ¶ 23; Carey Decl. ¶ 6. Additionally, he routinely conferred with both Ms. Boyd and other counsel and discussed the briefing and arguments to be made. ECF No. 176-1 ¶¶ 11, 13.

⁹ Fenix repeatedly refers to “Mr. Carey and his colleagues” or “Mr. Carey and his team.” ECF No. 185 at 6–8, 14–16.

1 Fenix also argues that Mr. Carey's Rule 11 duties could not be trusted to a
2 "subordinate" and are non-delegable. ECF No. 185 at 7 (citing *Pavelic & LeFlore*
3 *v. Marvel Entertainment Group*, 493 U.S. 120, 125 (1989) and *Unioil, Inc. v. E.F.*
4 *Hutton & Co.*, 809 F.2d 548, 558 (9th Cir. 1986)). As a threshold issue, the cases
5 Fenix cites refer to the signing attorney, not every attorney listed on the case. In
6 *Pavelic*, the court held: "Where the text establishes a duty that cannot be delegated,
7 one may reasonably expect it to authorize punishment only of the party upon whom
8 the duty is placed." *Pavelic*, 493 U.S. at 125. Fenix cannot claim the duty is non-
9 delegable while asking the Court to punish every attorney listed on the filings.¹⁰
10 Additionally, an attorney can rely on co-counsel. In *Unioil* the court found: "We
11 agree that reliance on forwarding co-counsel may in certain circumstances satisfy
12 an attorney's duty of reasonable inquiry." *Unioil*, 809 F.2d at 558 . "In relying on
13 another lawyer, however, counsel must 'acquire[] knowledge of facts sufficient to
14 enable him to certify that the paper is well-grounded in fact.'" *Id.* (quoting
15 Schwarzer, Sanctions Under the New Federal Rule 11—A Closer Look, 104 F.R.D.
16 181, 187 (1985)). While Mr. Carey did not review every single case, it cannot be
17 said he completely delegated his duty without having a good faith basis for the
18 filing. He was familiar with, reviewed, and read many of the cases, he was active in
19 drafting the Complaint and First Amended Complaint, and he discussed and
20 conferred on the at-issue briefing with Ms. Boyd and other counsel on multiple
21 occasions, ensuring that the legal claims were tenable. ECF No. 176-1 ¶¶ 11, 13;
22 Carey Decl. ¶ 6.

23
24 ¹⁰ Fenix also oddly argues that one of the 500 attorneys working at the combined
25 Plaintiffs' firms should have performed a cite check. This ignores that, other than
26 Ms. Boyd, Hagens Berman was the firm solely responsible for finalizing and filing
27 the briefs (and the only firm with the opportunity to fully do so), but it also
28 conflicts with Fenix's argument that the duty is non-delegable. Fenix cannot have it
both ways. Regardless, Hagens Berman admits that it failed in its processes to
check every case.

1 Fenix next argues that Mr. Carey, and all Plaintiffs' counsel, did not
2 supervise Ms. Boyd in violation of the California Rules of Professional Conduct.
3 As a preliminary issue, "whether a lawyer has direct supervisory authority over
4 another lawyer in particular circumstances is a question of fact." CA ST RPC Rule
5 5.1 cmt. ¶ (b). As is true of the other firms, Ms. Boyd had a co-counsel relationship
6 solely with Hagens Berman, and did not have a co-counsel agreement with any of
7 the other firms.¹¹ Carey Decl. ¶ 3. If Mr. Carey was in a supervisory role, Rule 5.1
8 requires only that the supervising attorney "make reasonable* efforts to ensure that
9 the other lawyer complies with these rules." CA ST RPC Rule 5.1(b). And the rule
10 states that a "lawyer shall be responsible for another lawyer's violation of these
11 rules . . . if . . . [he] knows* of the conduct at a time when its consequences can be
12 avoided or mitigated but fails to take reasonable* remedial action." CA ST RPC
13 Rule 5.1(c)(2).¹² Here, Mr. Carey did not know about Ms. Boyd's use of AI, he had
14 previously instructed her that Hagens Berman has a policy against its use, and she
15 failed disclose its use to Mr. Carey (or any other Plaintiffs' counsel). ECF No. 176-
16 1 ¶¶ 12, 19, 23. Additionally, Mr. Carey's efforts were reasonable considering the
17 circumstances. He had a long history of working with Ms. Boyd, she was a highly
18 skilled lawyer who had previously proven herself, and she never disclosed her use
19 of AI, even when asked about the record cites to the First Amended Complaint. *Id.*
20 ¶¶ 5–7, 12. Hagens Berman and Ms. Boyd took full responsibility for finalizing and
21 filing the briefs, and Hagens Berman—because it identified and fixed the record
22 cites—did not inform other co-counsel that it discovered any incorrect record cites
23 pre-filing. Carey Decl. ¶ 5.

24 ¹¹ Fenix has not cited anything to show that Tycko & Zavareei LLP, Timoney
25 Knox LLP, or Dorsey & Whitney, LLP—who, like Ms. Boyd, only have a co-
26 counsel relationship with Hagens Berman—have a supervisory role over Ms. Boyd.

27 ¹² "Knows" is defined as "actual knowledge" and "reasonable" means "conduct
28 of a reasonably prudent and competent lawyer." CA ST RPC Rule 1.0.1.

1 Fenix's cited cases on this point are inapposite, as each involves the
2 supervision of staff, not other lawyers. In *Palomo v. State Bar*, 685 P.2d 1185, 1191
3 (1984), the attorney in charge of the trust account gave an office manager complete
4 control over banking and bookkeeping, and provided no supervision, which resulted
5 in her depositing client funds in the payroll account. *Id.* Additionally, the attorney
6 in that case had "serious violations of an attorney's duty to oversee client funds
7 entrusted to his care, and to keep detailed records and accounts thereof." *Id.*
8 *Simmons v. State Bar of California*, 70 Cal. 2d 361, 367, 450 P.2d 291, 294 (1969),
9 involved an attorney who filed a misleading "affidavit prepared by his mother and
10 his secretary," which he failed to correct even after it was "called to his attention by
11 counsel for the State Bar." *Id.* The court found the "petitioner should have
12 supervised and controlled [the affidavit's] preparation and filing." *Id.* Last, *Matter*
13 *of Kostiv*, No. SBC-22-O-31036, 2024 WL 5256333, at *5 (Cal. Bar Ct. Dec. 13,
14 2024), involved an attorney who failed to notice his appearance, and the court
15 found he breached his duties of supervision by not directing "his staff to ensure" he
16 was properly listed as the attorney of record. This is not a situation where Mr.
17 Carey had a supervisory role over a non-lawyer, who he failed to properly
18 supervise. Rather he had a longstanding co-counsel relationship with Ms. Boyd.

19 Fenix's insinuation—that Plaintiffs' counsel may not have been aware of the
20 Court's AI disclosure requirement—is also unfounded. As Mr. Carey previously
21 disclosed, Hagens Berman has an AI policy in place, which would mean that no
22 disclosure should ever be necessary. ECF No. 176-1 ¶ 19. In addition, Plaintiffs'
23 counsel certified to this Court that they had reviewed this Court's procedures. ECF
24 No. 113 at 20. Ms. Boyd was informed of Hagen's Berman's AI policies, which
25 should have been enough to prevent her use of AI. ECF No. 176-1 ¶ 19. Fenix
26 offers no citation to support the notion that responsibility for this issue rests with
27 anyone other than Ms. Boyd. Dismissal is not an appropriate sanction here.
28

1 **2. Striking the responses, which would result in a dismissal, is not**
2 **supported in this case.**

3 Fenix argues the appropriate sanction is striking the briefs and dismissing the
4 case. Fenix ignores that a sanction “must be limited to what suffices to deter
5 repetition of the conduct or comparable conduct by others similarly situated.” Fed.
6 R. Civ. P. 11(c)(4). Here, Fenix cites nothing to show that dismissal is required to
7 deter repetition. Mr. Carey and Hagens Berman did not intentionally use AI. Their
8 error was one of process—an error they accept responsibility for and are taking
9 steps to correct. But any sanction should be to correct and deter what was a bad
10 process. They do not need to be deterred from using AI because they have not used
11 it and have a policy not to, which they follow.

12 Any sanction in this case should be limited to Ms. Boyd and/or Mr. Carey (or
13 Hagens Berman) and reflect the fact that Mr. Carey (or Hagens Berman) did not act
14 in bad faith and did not set out to intentionally deceive Fenix or this Court. This
15 same issue recently arose in *Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 493 (D.
16 Wyo. 2025), where the attorneys cited nine cases in their motions in limine, but
17 eight did not exist. The drafting attorney admitted to using AI. *Id.* at 493–94. The
18 signing attorneys never reviewed the motions before they were filed, but instead
19 relied on the drafting attorney, unaware that he had used AI. *Id.* The court revoked
20 the pro hac vice status of the drafting attorney but declined to revoke the pro hac
21 vice status of the attorney who signed the motion. *Id.* at 498. Instead, the court
22 imposed a fine of \$1,000 on the signers for breaching their Rule 11 duties. *Id.*

23 Additionally, Fenix’s cited cites do not support a dismissal. In the rare cases
24 where dismissal has occurred, or a filing has been struck resulting in a dismissal, it
25 was because the underlying briefing was of little value after the errors were
26 removed. Fenix cites *Grant v. City of Long Beach*, 96 F.4th 1255, 1256 (9th Cir.
27 2024), where the Ninth Circuit struck the opening brief and dismissed the appeal.
28 There, the district court had granted summary judgment in defendant’s favor and

1 the plaintiffs appealed. As the court found, the plaintiffs “materially misrepresent
2 the facts and holdings of the cases they cite in the brief, but they also cite two cases
3 that do not appear to exist.” *Id.* at 1257. The court also noted that counsel “did not
4 acknowledge the fabrications. Nor did counsel provide any other meaningful
5 support for Appellants’ claims.” *Id.* The court went on to find: “Appellants’ brief
6 includes only a handful of accurate citations, almost all of which were of little use
7 to this Court because they were not accompanied by coherent explanations of how
8 they supported Appellants’ claims. No reply brief was filed.” *Id.*

9 This is not the case here. Of the 103 cases cited across the four briefs, 97 of
10 them were supportive of Plaintiffs’ arguments. Even if the Court was to strike every
11 citation with an error—including those that were cited for the correct proposition
12 but the quotation did not match—most of the arguments would remain intact.¹³

13 In Response to the Fenix Defendants’ Motion to Dismiss, Plaintiffs’
14 arguments are broken into twelve sections. Five of those sections do not contain a
15 single citation error. ECF No. 176-6 (Section II.B on consent, Section II.C on §
16 230, Section II.E on RICO, Section II.G on § 1790, and Section II.I on CIPA). And
17 the remaining sections are well supported by cases that were accurately cited. For
18 example, eighteen cases are cited to support Plaintiffs’ jurisdiction arguments in
19 Section II.A. That section contains the single AI hallucinated case (on a forum
20 selection issue previously decided by the Court), and there are two other cases that
21 stood for the proposition, but the parenthetical was not accurate.¹⁴ ECF No. 176-5
22 at 4–14. One of those cases—*Briskin v. Shopify*, 135 F.4th 739 (9th Cir. 2025)—

23
24 ¹³ Plaintiffs do not address the Response to the Motion to Strike and the RFJN,
25 because there are no legal citation errors and Plaintiffs withdrew their objection to
the RFJN.

26 ¹⁴ Plaintiffs, on their own, fixed one additional cite—*Yamashita v. LG Chem,*
27 *Ltd.*, 62 F.4th 496, 503 (9th Cir. 2023)—because the quotations were not 100%
28 accurate.

1 was cited extensively throughout the argument. ECF No. 176-5 at 4–5, 7, 9. That
2 means Plaintiffs’ arguments on jurisdiction are supported by at least sixteen
3 authorities. As another example, in the VPPA section, Plaintiffs are asking to delete
4 any cases that suffered from AI problems—meaning the remaining arguments are
5 valid and the Court can decide them even without the corrective briefing. *Id.* at 27–
6 32.

7 Fenix points to the Response to the Motion for Reconsideration as being
8 particularly egregious, arguing it misrepresented “11 of the 18 cases cited.” ECF
9 No. 185 at 4, 9, 15. But that number is misleading. Plaintiffs’ arguments about
10 *EpicientRx, Inc. v. Superior Court*, 2025 WL 2027272 (Cal. July 21, 2025)—the
11 basis of Fenix’s Motion for Reconsideration—were accurate and did not contain
12 any AI errors. ECF No. 176-10 at 1–13. Additionally, all the cases cited to support
13 their argument that interlocutory certification is inappropriate stand for the correct
14 proposition. *Id.* at 14–16. Plaintiffs only ask to fix two parentheticals in that
15 section. But even without those parentheticals, the arguments are sufficient for the
16 Court to consider. And the cases that were cited for the wrong proposition were
17 either cited for a generic proposition that will not change the case, or Plaintiffs
18 already had cited a second case for that same proposition.

19 Fenix’s other cited cases do not dictate dismissal or striking of the motions.
20 In *Mavy*, 2025 WL 2355222, at *5, the court struck the opening brief because “well
21 over the majority of the citations provided to this Court in Plaintiff’s Opening Brief
22 were fabricated, misleading, or unsupported.” That is not the case here as the briefs
23 are well supported even if the Court removes the bad citations. Additionally, the
24 court in *Mavy* did not dismiss the plaintiff’s case. Instead, the court allowed the
25 plaintiff to hire new counsel or proceed as a self-represented party. *Id.* at *13.
26 Likewise here, if the Court was to strike the responses, under *Mavy*, Plaintiffs
27 would be entitled to new representation, which would start the process over. Even if
28 the Court was to dismiss Plaintiffs, the thousands of putative class members who

1 have reached out to counsel could, and likely would, file a new class action. *See*
2 *Smith v. Bayer Corp.*, 564 U.S. 299, 315 (2011) (“Neither a proposed class action
3 nor a rejected class action may bind nonparties.”). Dismissing this case will only
4 delay and prolong a decision on the merits.

5 **3. It would be unfair to sanction Plaintiffs through dismissal.**

6 Fenix’s claims that the Plaintiffs should be punished by dismissal is
7 unsupported. The only AI case that Fenix cites where the plaintiffs were dismissed
8 outright is *Grant*, 96 F.4th 1255. But as discussed above, that was because the
9 opening brief was not salvageable. *Id.* at 1257. Additionally, counsel in that case
10 did not admit to the errors, did not seek to correct them, and did not even bother
11 filing a reply brief. *Id.* It is also worth noting that the court was dismissing an
12 appeal after a decision on the merits. *Id.* Here, Plaintiffs have not had the chance to
13 have a decision on the merits. More importantly, counsel at Hagens Berman have
14 admitted to their errors in not fully checking Ms. Boyd’s work and in not following
15 their own protocols. As such, Hagens Berman is seeking to correct it in a way that
16 is the least prejudicial to Fenix and the Court.

17 Fenix’s other cited cases do not support its argument that Plaintiffs
18 themselves should be punished. In *Link v. Wabash Railroad Co.*, 370 U.S. 626,
19 627–29 (1962), the plaintiff’s case was only dismissed for failure to prosecute the
20 action, six years after the suit had been filed, three years after plaintiff had
21 prevailed on the defendant’s motion for judgment on the pleadings, and after the
22 plaintiff’s attorney intentionally failed to appear at the pretrial conference. *United*
23 *States v. Boyle*, 469 U.S. 241, 242 (1985), decided “whether a taxpayer’s reliance
24 on an attorney to prepare and file a tax return constitutes ‘reasonable cause’ under”
25 the Internal Revenue Code, to avoid a late filing penalty. The court found: “It
26 requires no special training or effort to ascertain a deadline and make sure that it is
27 met” and the late filing “is not excused by the taxpayer’s reliance on an agent.” *Id.*
28 at 252. Similarly, in *Pioneer Investment Services Co. v. Brunswick Associates*

1 *Limited Partnership*, 507 U.S. 380, 388 (1993), the court examined whether a
2 creditor’s failure to file a timely claim in a bankruptcy constituted “excusable
3 neglect” under the Bankruptcy Code. The court found its attorney’s delay did not
4 constitute excusable neglect. *Id.* at 396–97. But, in doing so, the court noted that
5 there was no prejudice to the creditor because the “debtor’s second amended plan of
6 reorganization . . . takes account of respondents’ claims.” *Id.* at 397. In its response,
7 Elite Creators cites one additional case to support dismissal. ECF No. 183 at 2
8 (citing *Saxena v. Martinez-Hernandez*, No. 2:22-cv-02126-CDS-BNW, 2025 WL
9 1194003, at *2–3 & n.5 (D. Nev. April 23, 2025)). In *Saxena*, the pro se plaintiff
10 failed to file an amended complaint that complied with Rule 8, used AI to draft a
11 brief, failed to admit to the use of AI, filed a “joint” submission without defendants’
12 permission, and lied about participating in a Rule 26(f) conference. *Id.* at *2–3.

13 None of these cases are comparable to the present case. Plaintiffs have not
14 failed to prosecute their action for years, they did not bring frivolous claims and lie
15 to the Court, and they did not ignore deadlines. And unlike the creditor in *Pioneer*
16 *Investment Services*, the Plaintiffs (and thousands of absent putative class members)
17 would be prejudiced by a dismissal.

18 **B. Plaintiffs’ proposed corrections are not prejudicial.**

19 **1. Fenix cannot show that the corrected briefs are prejudicial.**

20 Fenix’s claim of prejudice—in allowing Plaintiffs to file corrective briefs—is
21 unsupported. Fenix does not address the actual corrections made to the briefs, does
22 not acknowledge that Plaintiffs do not seek to add new cases (with a single
23 exception already addressed by the Court), and does not acknowledge that Plaintiffs
24 have deleted any arguments or cases that relied on bad case law or could be
25 prejudicial. What is left after Plaintiffs make their corrections are the original
26 arguments supported by the original cited cases. A review of the redlines shows that
27 Fenix has less to respond to, not more.
28

1 Instead of explaining how the specific corrections prejudice Fenix, they cite
2 several cases to show that corrective briefs are prejudicial to the opposing party. In
3 *Johnson v. Dunn*, No. 2:21-CV-1701-AMM, 2025 WL 2086116, at *4, *16 (N.D.
4 Ala. July 23, 2025), the court granted leave to file corrective briefs, which replaced
5 the fake citations with new legal authority that stood for the same proposition. Here,
6 Plaintiffs do not seek to replace or add any legal authority, except for a single case
7 that the Court and parties previously relied on as it relates to the forum-selection
8 clause. Fenix also cites *United States v. Hayes*, 763 F. Supp. 3d 1054, 1064 (E.D.
9 Cal. 2025), where the attorney “submitted a fictitious or non-existent case,”
10 “knowingly made inaccurate and misleading statements in his written reply,” and
11 “knowingly made inaccurate and misleading statements” to the court. Here,
12 Plaintiffs immediately corrected their errors and admitted to their mistakes. Last,
13 Fenix cites *ByoPlanet International, LLC v. Johansson*, No. 0:25-CV-60630, 2025
14 WL 2091025, at *1 (S.D. Fla. July 17, 2025), where the lawyer “repeatedly use[d]
15 false, fake, non-existent, AI-generated legal authorities in the drafting of
16 complaints, motions, and other filings . . . in eight separate but related cases.” This
17 case did not involve the intentional use of AI by Hagens Berman (or any Plaintiffs’
18 counsel from the other three firms). This is the first time Hagens Berman has been
19 accused of using AI, and its use here resulted from Hagens Berman’s process
20 failure, not an intention to deceive the Court or Fenix.

21 **2. Undersigned counsel had an obligation to correct the briefing and**
22 **be forthcoming with the Court.**

23 One of the overriding lessons to be gleaned from the cases dealing with the
24 use of AI, is that there is a duty for counsel to move to correct the errors and be
25 forthcoming with the court. That is precisely what Plaintiffs’ counsel have done
26 here. In *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 449 (S.D.N.Y. 2023), the
27 attorneys were sanctioned in part because they did not “come[] clean about their
28 actions” or correct their errors. The attorneys never sought to withdraw the brief “or

1 advise the Court that it may no longer rely upon it.” *Id.* at 459. Similarly in *Lacey v.*
2 *State Farm General Insurance Co.*, No. CV 24-5205 FMO (MAAX), 2025 WL
3 1363069, at *2 (C.D. Cal. May 5, 2025), also cited by Fenix, the law firm was on
4 notice of the problematic AI cases, but then submitted a corrected brief without
5 admitting to using AI or deleting the “AI-generated problems in the body of the
6 text,” “and re-submitted the brief with considerably more made-up citations and
7 quotations.” In sanctioning those attorneys, the court found the most egregious
8 error was “the re-submission of the defective Revised Brief without adequate
9 disclosure of the use of AI.” *Id.* at 4.

10 Hagens Berman immediately sought to correct its mistake, identify and admit
11 to what caused the errors, and sought to file corrective briefs to ensure that the
12 Court did not have to wade through bad citations or arguments. Plaintiffs provided
13 redlines to the Court to make it easier for the Court to assess the arguments. Hagens
14 Berman also intentionally corrected the briefs in a way that would be the least
15 prejudicial to Fenix.

16 **3. The proposed corrective briefs also reduce any prejudice to the**
17 **Court.**

18 Plaintiffs also moved to correct the briefs as soon as possible to reduce any
19 prejudice to the Court. Plaintiffs did not want the Court to have to sort through the
20 citations to figure out what was accurate before the oral argument. With that in
21 mind, Plaintiffs immediately requested a meet and confer with Fenix, and then filed
22 their briefs eight days later,¹⁵ after waiting seven days as required by the Local
23 Rules. In correcting those briefs, Plaintiffs submitted redlines of all the proposed
24 corrective briefs (performing a full cite check on every case) so the Court could

25 ¹⁵ To ensure that everything had been checked correctly, Plaintiffs needed eight
26 days instead of seven days to correct all the briefs. Even though the issue is moot,
27 Fenix complains that Plaintiffs waited seven hours between filing the Motion for
28 Leave and the Motion for Continuance. Plaintiffs assume that Fenix is unaware that
the Court’s CM/ECF system was experiencing an outage most of that day.

1 easily identify and see what cases or arguments were problematic. They also
2 withdrew any arguments that were tainted by bad case law.

3 IV. CONCLUSION

4 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
5 Plaintiffs leave to withdraw ECF Nos. 138, 141, 142, and 158, and file corrective
6 briefs.

7 DATED: September 11, 2025 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief
contains 6,999 words which complies with the word limit of C.D. Cal. L.R. 11-6.1.

Dated: September 11, 2025

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